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REMARKS

In the Office Action, the Examiner rejected claim 1 under 35 USC § 101 as being directed to non-statutory subject matter. The Examiner stated that “Applicant’s claims are directed to an algorithm.” The Examiner alleged that the pending claims recite steps that “are mere ideas in the abstract” and “do not produce a useful, concrete and tangible result.” Applicants traverse the Examiner’s rejection under 35 USC § 101 for the following reasons.

First of all, claim 1 is no longer pending in the present application so it is unclear how a rejection of that claim can be made – although not confirmed, the Applicants have assumed the Examiner made a typographical error and meant to state claim 22.

Second, the pending claims are clearly not directed to an algorithm and do not recite steps as alleged by the Examiner. Claim 22 (and the claims that depend from claim 22) unambiguously recite an investment vehicle comprising, among other things, a programmed computerized data processing system and a graphical user interface. Applicants fail to see how the Examiner could possibly construe these physical objects as an algorithm, steps or a “mere abstract idea.” Applicants would like to assert that these terms represent useful, concrete and tangible things.

Third, in the prior Office Action, the Examiner also issued a rejection under 35 U.S.C. § 101 of the then pending claims and advised Applicants to imbed a computer into the body of the claims. However, even after following the Examiner’s advice by inserting the element “programmed computerized data processing system” into claim 22, the Examiner continues to reject the claims as being directed to non-statutory subject matter, in complete contradiction to the Examiner’s suggestion.

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Therefore, Applicant has further amended independent claim 22 to recite even more structural elements, such as computer hardware and computer software and at least one central processing unit for performing data processing operations, storage devices, databases, and communications interfaces. The Applicants further amended the claim to clearly indicate that the specified operations are performed by the “programmed computerized data processing system”. In view of these amendments, Applicants request that the Examiner withdraw the rejection under § 101. If these amendments to claim 22 are still not sufficient to convince the Examiner that the claims are directed to statutory subject matter, Applicants ask that the Examiner please suggest some alternative language.

In paragraph 7 of the Office Action, the Examiner raises an issue with Applicants use of the term “can” in the claims and apparently used that as a rationale to ignore many of the elements and limitations in the claims. Although Applicants disagree with the Examiner’s rationale, Applicants have amended the claims to remove the term “can”, and similarly, the word “wherein”, where practical, in an effort to address the Examiner’s concerns.

The Examiner further rejected claims 22-42 under 35 U.S.C. § 102 as being anticipated by U.S. Patent No. 6,161,098 issued to Wallman whereas the remainder of paragraph 5 refers to Lupien et al. Upon speaking with the examiner on 3/11/2008, Applicants accept the fact that this rejection was made in error and that the Applicants were not required to address this rejection.

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In view of the foregoing, Applicants believe that the present application is
now in condition for allowance and respectfully request an early and favorable action.

Respectfully submitted,

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